

SENATE BILL REPORT

ESB 6744

As Passed Senate, February 18, 2008

Title: An act relating to homeowners' associations.

Brief Description: Concerning homeowners' associations.

Sponsors: Senators Fraser and Fairley.

Brief History:

Committee Activity: Consumer Protection & Housing: 1/24/08, 2/01/08, 2/05/08 [DPS-WM].

Ways & Means: 2/11/08, 2/12/08 [DPS(CPH), w/oRec].

Passed Senate: 2/18/08, 44-1.

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: That Substitute Senate Bill No. 6744 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Weinstein, Chair; Kauffman, Vice Chair; Honeyford, Ranking Minority Member; Delvin, Haugen, Jacobsen, Kilmer and McCaslin.

Staff: Vanessa Firnhaber-Baker (786-7471)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6744 as recommended by Committee on Consumer Protection & Housing be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Hatfield, Hobbs, Keiser, Kohl-Welles, Parlette, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Tom.

Minority Report: That it be referred without recommendation.

Signed by Senators Carrell and Honeyford.

Staff: Richard Ramsey (786-7412)

Background: A homeowners' association (HOA) is an organization consisting of the homeowners and property owners within a residential development. HOAs are usually created by a land developer or builder of a planned residential development pursuant to a declaration

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of covenants, conditions, and restrictions. That land developer or builder may also be referred to as the declarant.

HOAs may be organized in different ways, including incorporation under the Business Corporation Act or the Nonprofit Corporation Act, or as an unincorporated association. The duties and powers of an HOA are defined by the Homeowners' Association Act (HOAA), the HOA's declaration and other governing documents, and the law governing the HOA's legal entity (e.g., nonprofit corporation law).

Powers: Under the HOAA, an HOA may exercise the following powers: adopt and amend bylaws and rules; adopt and amend budgets; impose assessments on homeowners; involve itself in litigation; enter into contracts; improve and maintain the common areas; acquire and convey property; levy reasonable fines on members for late payment of assessments or violations of rules; and any other power necessary and proper to carry out its duties. However, these powers may be supplemented or superceded by an HOA's governing documents and by the law governing the HOA's legal entity.

Meetings: An HOA must hold meetings annually. Additional special meetings may be called by the HOA board president, a majority of the board, or by homeowners holding 10 percent of the votes in the HOA. HOA meetings must be open to homeowners and minutes must be taken. The HOA board may go into closed session if it votes to do so in an open meeting and only does so to consider personal matters, discuss legal matters, prepare for litigation, or to discuss a possible violation of the governing documents.

Notice of meetings must be given to homeowners between 14 and 60 days before the meeting is held. Notice must be by either hand delivery or first class mail to the homeowner's designated address.

Duties: HOA governing documents must provide for the number, duties, and terms of the HOA's officers and directors, procedures for electing the officers, and the directors and officers' delegation powers. HOA officers and directors must act with loyalty and care when acting on behalf of the HOA. In addition, an HOA's officers and directors must carry out the following duties: provide homeowners with notice and a ratification process for the annual budget; keep sufficient records; prepare annual financial statements; provide homeowners with notice and an opportunity to be heard before levying a fine. Other duties may be required by the HOA's governing documents and the law governing the HOA's legal entity.

Task Force: In 2006, the Legislature passed SSB 6201, which created a HOAA committee. The committee consisted of two legislators, a representative from the Community Association Institute, a representative from the Washington HOA, a representative of the residential development industry, a lawyer experienced in representing HOAs, a lawyer experienced in representing homeowners, a person with expertise in HOA law, and two members of an HOA who are not on the HOA's board of directors.

The committee was directed to review the HOAA and the Uniform Common Ownership Interest Act, and current issues concerning HOAs. Moreover, the committee was charged with specifically considering these issues: the method of amending declarations; voting; alternative dispute resolution mechanisms; communication between HOAs and homeowners; the budget ratification process; conflicts of law; the process of placing liens on property for a previous

homeowners' unpaid association dues; and disclosures on the sale of real property within the association. After a review of the relevant law and statutes, the committee was required to report back to the Legislature with its findings and its proposed legislation for amending the HOAA in September 2007.

Summary of Engrossed Bill: The Department of Community Trade & Economic Development (CTED) must conduct a study to determine the efficacy of creating either state or local appeals boards and/or HOA ombudsman offices. The ombudsman offices or appeals boards would provide dispute resolution services and information to homeowners on their rights and duties under the HOAA. Specifically, CTED must determine: (1) trends in the number of HOA communities and the number of Washington residents that live in these communities; (2) the number of homeowners who would use the ombudsman office; (3) the expenses likely to be incurred if the ombudsman office is created; and (4) whether, given the costs and benefits, the ombudsman office should be created.

CTED must appoint an advisory committee to assist with the study. The advisory committee may include up to two legislators from each chamber and from each caucus. Travel reimbursement for all members of the advisory committee must be provided. CTED must complete this study by December 10, 2008. The study must also include recommendations for procedures for the ombudsman office if CTED determines that the benefits of creating it outweigh the costs.

A task force is created to study HOA declarations and how to provide information on HOAs to prospective purchasers of homes in communities governed by HOAs. The task force is required to review declarations used to form HOAs in Washington and in other states. It must then draft model HOA declarations, which may be used by declarants to form homeowners' associations. The task force's membership must include: two HOA board members, three owners of homes in HOA-governed communities, two attorneys with expertise in HOA law, a representative from CTED, and a representative of city governments. The task force may also include up to four legislators: up to two from each chamber and up to two from each caucus. The task force will provide a report of the model declarations and its recommendations for providing information on HOAs to prospective buyers to the Governor and the Legislature by December 10, 2008.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Consumer Protection & Housing):

PRO: Declarant control is addressed in this bill, which is much needed. If the homeowners' association's (HOA) declarant reserves the right to control the board, homeowners must pay dues but they have no rights. It would be helpful to have a government entity to help with disputes between HOAs and homeowners. Model declarations are a good idea because there is no uniformity in what declarants are using.

OTHER: The timeline for the taskforce is very aggressive; it may be difficult for it to determine recommendations by December 2008.

Persons Testifying (Consumer Protection & Housing): PRO: Senator Karen Fraser, prime sponsor; Marion Morgenstern, HOA Act Committee Chair.

OTHER: Marie Sullivan, Community Trade & Economic Development.

Staff Summary of Public Testimony on Recommended Substitute (Ways & Means):

PRO: This is one of two bills that are the product from a work group during 2007. The other addresses policy changes. This directs CTED to evaluate the usefulness of creating an Home Owners Association ombudsman office. It also creates a task force to recommend model declarations for Home Owners Associations.

Persons Testifying (Ways & Means): PRO: Senator Karen Fraser, prime sponsor.